

Town of Amherst  
Zoning Board of Appeals - Special Permit  
*DECISION*

**Applicant:** Sonya Sofield  
1339 South East Street, Amherst, MA 01002

**Date Application filed with the Town Clerk:** June 1, 2007

**Nature of request:** Petitioner seeks to renew Special Permit ZBA FY2005-00021 for a flag lot, under Section 6.3 of the Zoning Bylaw, and to modify Condition #1 restricting the highest point of the structure.

**Location of property:** 1467 South East Street, Map 23D, Parcel 57, R-O zone.

**Legal notice:** Published in the Daily Hampshire Gazette on June 7 and June 14, 2007, and sent to abutters on June 5, 2007.

**Board members:** Tom Simpson, Hilda Greenbaum and Al Woodhull

**Submissions:**

The applicant submitted the following documents:

- Property line survey showing Parcels A and B prepared by Almer Huntley, Jr. & Associates, Inc., dated July 17, 1974, revised July 26, 1974;
- Topographical Plan prepared by Almer Huntley & Associates, Inc., dated July 17, 1974;
- A photograph taken from the Hampshire College Campus showing the some of the houses that have been built in the vicinity of the flag lot, since 1974, when the first Special Permit was granted;
- Copies of previous Special Permits: ZBA 74-47 and ZBA FY2005-00021;
- A copy of the Deed from Herbert C. Hutchings and Harriet A. Hutchings to David R. Sofield and Sonya R. Sofield conveying the flag lot, undated;
- A copy of the Deed from David R. Sofield and Sonya R. Sofield to Sonya R. Sofield conveying the flag lot, dated February 14, 1995;
- A copy of the Assessor's map showing Parcel 23D-57.

Planning Department staff submitted the following documents:

- Various plans from the Amherst GIS Viewer showing property lines and topography for lots in the vicinity of the flag lot, including Mount Pollux;
- Various photographs taken by Planning Department staff showing views towards the property and the surrounding structures from various points in South Amherst;
- A memorandum dated June 14, 2007, commenting on the application;
- A copy of the most recent previous Special Permit ZBA FY2003-00015.

**Site Visit:** June 20, 2007

At the site visit the Board was met by the applicant, Sonya Sofield. The Board observed the following:

- The location of the property on a heavily-traveled country road, surrounded by large lots and large homes;
- The nearby Mount Pollux Conservation Area;

- The old gravel access road that runs up the middle of the access strip;
- The paved driveway that leads to the house at 1491 South East Street;
- The open, grassy field covering a large portion of the flag lot;
- The wooded area on the west side of the lot;
- The hilltop located on the adjacent parcel to the east;
- The surrounding views of the hills and nearby homes.

**Public Hearing:** June 21, 2007

Mr. Simpson disclosed that he and the applicant, Ms. Sofield, had served together on the Zoning Board of Appeals as recently as a few years ago and that this fact would not affect his judgment in this case.

At the public hearing Sonya Sofield presented the petition. She made the following comments:

- She seeks to renew the Special Permit granted in 2005 for a flag lot;
- The property now has an address, 1467 South East Street;
- The first Special Permit for this flag lot was granted in 1974 and the applicant has been renewing the permit every few years since that time;
- The conditions of the permits have remained essentially the same;
- In accordance with the conditions of the previous permits, Ms. Sofield does not plan to use any detrimental products or materials on the portion of the property that lies within the Aquifer Recharge Area, that part comprising the access pole;
- Ms. Sofield would like the Board to review the condition restricting the height of structures on the site;
- Ms. Sofield does not wish to build on the crest of the hill;
- She and her former husband voluntarily agreed to a 35-foot setback from the property line that they shared with the Hutchings and that they now share with the Haydens.

Ms. Greenbaum referred to a topographical plan that she had obtained from the Amherst Public GIS Viewer and asked questions related to the topography shown on the GIS plan and the topography shown on the survey plan prepared by Almer Huntley & Associates, Inc. The Board and Ms. Sofield discussed the different elevation references ("survey datums") used for the GIS map and the Huntley topographical survey, and they determined that the topographical survey was based on a "bench mark" set by the surveyor. The elevations shown on the plan are relative to that "bench mark" rather than being relative to sea level. The elevations shown on the GIS plan are relative to sea level.

Ms. Sofield presented a photograph taken from the Hampshire College Campus that she had submitted to the Board, showing the view of buildings adjacent to her property, in particular two houses that have been built that are higher than the crest of the hill.

Christine Brestrup, Senior Planner, presented photographs that Ms. Greenbaum had requested, showing the solar panels that had been erected on the adjacent Hayden property as well as views towards the site from Bay Road and Mount Pollux.

Ms. Sofield showed on the photographs which houses were higher than the crest of the hill.

The Board discussed whether to delete the condition restricting the height of structures on the site. Ms. Sofield stated that it was the original Special Permit that required the height restriction. The reason that the height restriction was placed in the deed is because it was required by the Special Permit.

Ms. Sofield went on to say that the original sellers, the Hutchings, did not require the height restriction. The Hutchings asked for the 35 foot setback from the property line for structures. The 35-foot setback is shown on the property line survey plan as well as the topographical survey plan. Originally the height restriction had been described as limiting the height of any building to ten (10) feet below the crest of the hill. Then the restriction was changed to limiting the height of any building to no higher than the 102-foot elevation as shown on the plan prepared by Almer Huntley.

Ms. Greenbaum and Mr. Simpson stated that they were willing to grant Ms. Sofield's request to delete the condition related to height restriction.

Aaron Hayden of 1491 South East Street, an immediate abutter to the southeast, spoke against deleting the height restriction. He stated that he also has a height restriction on his property, that he accepts the restriction, and that the solar panels that were installed on his property are well below the ridge line. He stated that he has a strong interest in maintaining the ridgeline as undeveloped.

The Board discussed the height of a house that could be built on the flag lot and still meet the requirements of the height restriction. They discussed possible locations for a house relative to the topographical elevations.

Mr. Woodhull expressed his strong support of the height restriction. He stated that the time to relax the restriction was when someone proposed an actual house and then the Board would have an idea of exactly how high the house might be and where it should be located.

Ms. Greenbaum noted that there are two other houses in the immediate area that are higher than the ridge line and that they are visible from Hampshire College and other points around South Amherst. She further noted that the restriction was placed on this property prior to the Town's purchase of the Mount Pollux Conservation Area.

Mr. Woodhull stated that he would find it difficult to support the renewal of the Special Permit if the height restriction were not included in the conditions.

The Board members noted that the issue of the height restriction could be dealt with at the time that someone proposed to build a house on the lot. Ms. Sofield currently has no plans to build a house there.

Mr. Simpson stated that the reason that the Board was considering imposing the height restriction in the current Special Permit is because this lot is a flag lot and therefore is subject to a Special Permit. Other lots in the area which are not subject to Special Permits do not have this height restriction.

Mr. Simpson asked if the Board members still wished to keep the condition requiring soil testing prior to construction. After reviewing the Special Permit ZBA FY2003-00015, Mr. Simpson withdrew his suggestion to delete that condition related to soil testing because he understood that this condition had been imposed during the 2005 public hearing process rather than having been imposed in 1974 as part of the original permit.

Mr. Simpson MOVED to close the evidentiary portion of the public hearing. Mr. Woodhull SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

#### **Public Meeting – Discussion**

The Board determined that it would rely on the conditions and findings developed for Special Permit FY2005-00021 in granting the current application for Special Permit.

**Public Meeting – Findings:**

The Board finds under Section 6.3 of the Zoning Bylaw, Flag Lots, that:

6.32 – The buildable area, exclusive of the access strip, is more than double the minimum lot area required in an R-O Zoning District. The building area is approximately 3.83 acres. The Bylaw requires 60,000 square feet for a flag lot in this district, or less than 1.5 acres.

6.33 – The access pole is 228.63 feet long and 43 feet wide. The maximum length allowed is 400 feet for the pole and the minimum width is 40 feet.

6.34 – The width of that portion of the lot where the principal building is to be constructed is 388 feet, which exceeds the 150-foot length required for street frontage in an R-O zoning district.

6.35 – The building area, 3.83 acres, is capable of containing a circle whose diameter is 150 feet, which is the frontage requirement in an R-O district.

6.37 & 7.702 – The driveway within the access strip can be adequately drained and can be designed to not exceed 5% grade within fifty (50) feet of the property line at the street.

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings, that:

10.380 & 10.381 – The proposal is suitably located in the neighborhood in which it is proposed, since there are many single-family houses on large lots in the area.

10.10.383 & 10.384 – The proposal will not be an inconvenience or hazard to abutters since flag lots are common in the area. Appropriate facilities can be provided at this location.

10.385 & 10.387 – The proposal protects adjoining premises against visually offensive structures and safe vehicular movement given the conditions of this permit. That is, any residential structure is restricted to no higher than an elevation of 102 feet as shown on the topographical plan prepared by Almer Huntley & Associates, Inc., dated July 17, 1974, and the driveway shall be graded for safe entry or exit from the site.

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw since the proposal will conserve a large portion of the hill and will promote the safety and convenience of the residents of Amherst.

**Public Meeting – Zoning Board Decision**

Ms. Simpson MOVED to grant the application with the conditions and findings as included in Special Permit ZBA FY2005-00021. Mr. Woodhull SECONDED the motion.

For all the reasons stated above the Board VOTED unanimously to grant a Special Permit with conditions, under Section 6.3 of the Zoning Bylaw, to renew Special Permit FY2005-00021 for a flag lot, as applied for by Sonya Sofield, at 1467 South East Street, (Map 23D, Parcel 57, R-O Zone).

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THOMAS SIMPSON

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HILDA GREENBAUM

\_\_\_\_\_  
AL WOODHULL

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2007 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2007.

NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2007  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
in the Hampshire County Registry of Deeds.

Town of Amherst  
Zoning Board of Appeals

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit, under Section 6.3 of the Zoning Bylaw, to renew Special Permit FY2005-00021 for a flag lot, as applied for by Sonya Sofield, at 1467 South East Street, (Map 23D, Parcel 57, R-O Zone), with the following conditions:

1. The following building restriction shall conform to that recited in the 1995 deed:

“the highest point of the roof of any structure built upon the land being conveyed shall not exceed [an] elevation of 102 feet, such elevation being established in reference to the topographical plan of Amherst, Massachusetts, prepared for David Sofield by Almer Huntley, Jr. and Associates, Inc., dated July 17, 1974, with all grades shown thereon based on an assumed benchmark elevation of 100.00 at sta. 306.”
2. Prior to issuance of a building permit for a residence, the following shall be submitted to the Zoning Board of Appeals for its review and approval at a business meeting:
  - A final revised site plan, including a grading and drainage plan, siting of the residence and outbuildings, site and building lighting and a plan of the driveway indicating grading and materials.
  - The soil in the vicinity of the construction area shall be tested for arsenic. The test results and a plan showing the extent of the area tested and sampling locations shall be submitted to the Board and filed in the Zoning Board of Appeals office, located in the Planning Department.
3. The siting of the house shall conform to Sections 6.34 and 6.35 of the Bylaw. That is, the building shall be constructed in the building area capable of containing a circle whose diameter is equal or greater than 150 feet.
4. The drainage plan and driveway plan must be submitted to and approved by the Town Engineer prior to submittal to the Zoning Board of Appeals.
5. The Aquifer Recharge Protection (ARP) District restrictions found in Section 3.254 of the Bylaw shall be observed on the access pole section of the property. This includes, but is not limited to, a prohibition on the use of sodium chloride, fertilizers, pesticides and other hazardous leachable materials.
6. This permit shall expire two years after filing with the Town Clerk unless substantial construction has commenced within that period.

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THOMAS SIMPSON, Chair  
Amherst Zoning Board of Appeals

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DATE